

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

Case No. 1:24-CV-00946

PREPARED FOOD PHOTOS, INC. f/k/a  
ADLIFE MARKETING &  
COMMUNICATIONS CO., INC.,

Plaintiff,

v.

WARNER BROS.  
DISCOVERY, INC.,

Defendant.

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**COMPLAINT**

Plaintiff Prepared Food Photos, Inc. f/k/a Adlife Marketing & Communications Co., Inc.  
 (“Plaintiff”) sues defendant Warner Bros. Discovery, Inc. (“Defendant”), and alleges as follows:

**THE PARTIES**

1. Plaintiff is a corporation organized and existing under the laws of the State of Florida with its principal place of business located in Broward County, Florida.

2. Defendant is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 30 Park Avenue South, New York, NY, 10003. Defendant’s agent for service of process is The Corporation Trust Company, Corporation Trust Center 1209 Orange Street, Wilmington, DE 19801.

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Defendant because it has maintained

sufficient minimum contacts with New York such that the exercise of personal jurisdiction over it would not offend traditional notions of fair play and substantial justice.

5. Venue properly lies in this district pursuant to 28 U.S.C. § 1400(a) because Defendant or its agents reside or may be found in this district. “A defendant ‘may be found’ wherever that person is amenable to personal jurisdiction.” Cavu Releasing, LLC. v. Fries, 419 F. Supp. 2d 388, 394 (S.D.N.Y. 2005). In other words, “[v]enue is proper in his District because the defendants are subject to personal jurisdiction in this District.” Noble v. Crazetees.com, 2015 U.S. Dist. LEXIS 130508, at \*9 (S.D.N.Y. July 16, 2015).

## **FACTS**

### **I. Plaintiff’s Business and History**

6. Plaintiff is in the business of licensing high-end, professional photographs for the food industry.

7. Through its commercial website ([www.preparedfoodphotos.com](http://www.preparedfoodphotos.com)), Plaintiff offers a monthly subscription service which provides access to/license of tens of thousands of professional images.

8. Plaintiff charges its clients (generally, grocery stores, restaurant chains, food service companies, etc.) a minimum monthly fee of \$999.00 for access to its library of professional photographs.

9. Plaintiff does not license individual photographs or otherwise make individual photographs available for purchase. Plaintiff’s business model relies on its recurring monthly subscription service such that Plaintiff can continue to maintain its impressive portfolio.

10. Plaintiff owns each of the photographs available for license on its website and serves as the licensing agent with respect to licensing such photographs for limited use by

Plaintiff's customers. To that end, Plaintiff's standard terms include a limited, non-transferable license for use of any photograph by the customer only. Plaintiff's license terms make clear that all copyright ownership remains with Plaintiff and that its customers are not permitted to transfer, assign, or sub-license any of Plaintiff's photographs to another person/entity.

## **II. The Work at Issue in this Lawsuit**

11. In 1999, a professional photographer employed and/or contracted by Plaintiff created a photograph titled "BeefEyeRoundRoast014." (the "Work"). A copy of the Work is displayed below:



12. The Work was registered by Plaintiff (pursuant to a work-for-hire agreement with the author that transferred all rights and title in the photograph to Plaintiff) with the Register of Copyrights on August 05, 2016 and was assigned Registration No. VA 2-012-581. A true and correct copy of the Certificate of Registration pertaining to the Work is attached hereto as **Exhibit "A."**

13. Plaintiff is the owner of the Work and has remained the owner at all times material hereto.

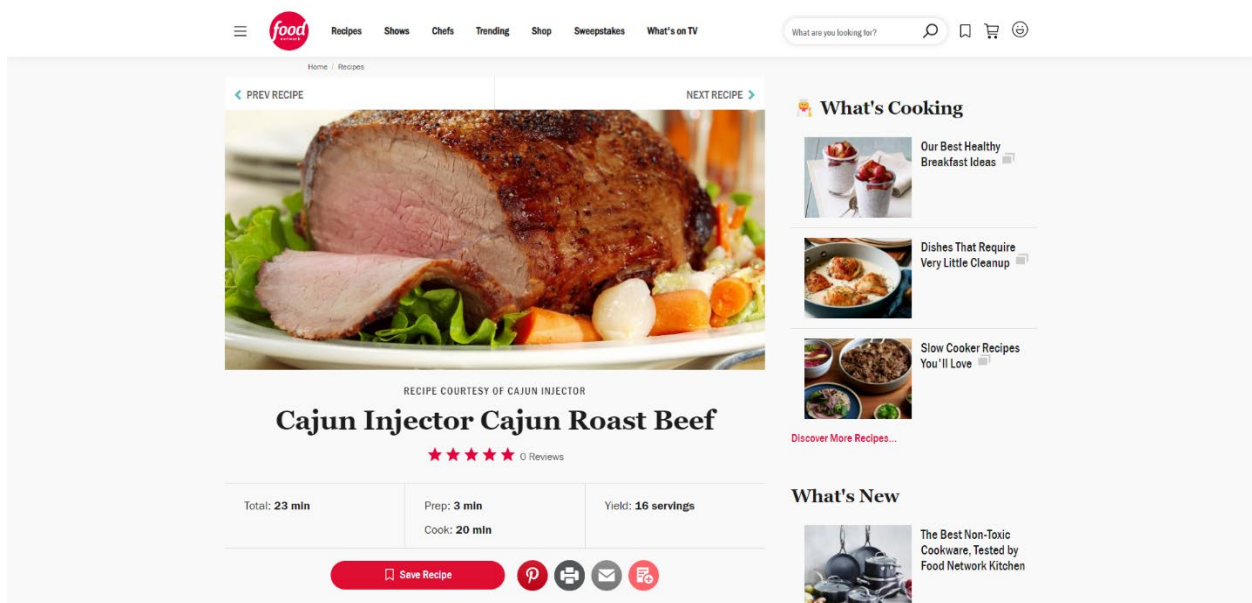
## **III. Defendant's Unlawful Activities**

14. Defendant is a multinational mass media and entertainment conglomerate based in

New York City.

15. Defendant advertises/markets its business through its website (<https://wbd.com/>), social media (e.g., <https://www.facebook.com/WBD>, <https://www.instagram.com/wbd/>, <https://twitter.com/wbd/>), and other forms of advertising.

16. On a date prior to the above-referenced copyright registration of the Work, Defendant displayed and/or published the Work on its website, webpage, and/or social media (at <https://www.foodnetwork.com/recipes/cajun-injector-cajun-roast-beef-3416274>):



17. A true and correct copy of screenshots of Defendant's website, webpage, and/or social media, displaying the copyrighted Work, is attached hereto as **Exhibit "B."**

18. Defendant is not and has never been licensed to use or display the Work. Defendant never contacted Plaintiff to seek permission to use the Work in connection with Defendant's website, webpage, and/or social media – even though the Work that was copied is clearly professional stock photography that would put Defendant on notice that the Work was not intended for public use.

19. Defendant utilized the Work for commercial use.

20. Upon information and belief, Defendant located a copy of the Work on the internet and, rather than contact Plaintiff to secure a license, simply copied the Work for its own commercial use.

21. Through its ongoing diligent efforts to identify unauthorized use of its photographs, Plaintiff discovered Defendant's unauthorized use/display of the Work in November 2022.

22. Plaintiff's primary business is the creation of new photo/video content and licensing such content to supermarkets, ad agencies, etc. To ensure that Plaintiff's valuable intellectual property is not being misappropriated (which necessarily lowers the value thereof), Plaintiff employs a full-time paralegal and other staff that each (when time permits) perform reverse-image searches using Google Images (<https://www.google.com/imghp?hl=en>) and review grocery store electronic/print ads to determine whether Plaintiff's images are being misused.

23. Plaintiff's staff generally searches using a rotating sub-set of photographs that may be illegally/improperly published by non-licensees.

24. Plaintiff has likewise engaged various third-party, professional technology companies and/or law firms over the years to search the internet for the unlawful use of Plaintiff's copyrighted works. Due to the enormous amount of data on the internet, the billions and billions of different webpages and the billions and billions of data points that need to be searched for the thousands of copyrighted works in Plaintiff's catalogue, not every search discloses every unlawful use of Plaintiff's copyrighted works. Numerous searches are conducted routinely. The results of these searches are then painstakingly analyzed at great cost to Plaintiff. Accordingly, the infringements at issue in this litigation were only discovered after numerous searches on the internet over the years for Plaintiff's copyrighted works.

25. That Plaintiff did not discover these infringements sooner occurred not due to a lack of effort by Plaintiff, but rather due to the sheer size of the internet. The routine searches by Plaintiff itself and/or third-parties on behalf of Plaintiff were conducted over the years did not disclose the infringement at issue in this case until only recently because of the vast amounts of data on the internet to be search and the inability of the technology currently affordable on the market to locate in a few searches every infringing use of photographs in Plaintiff's catalogue.

26. Given the volume of Plaintiff's library, Plaintiff was reasonably unable to discover Defendant's improper use of the Work prior to November 2022.

27. Following Plaintiff's discovery, Plaintiff notified Defendant in writing of such unauthorized use. To date, Plaintiff has been unable to negotiate a reasonable license for the past infringement of the Work.

28. All conditions precedent to this action have been performed or have been waived.

### **COUNT I – COPYRIGHT INFRINGEMENT**

29. Plaintiff re-alleges and incorporates paragraphs 1 through 28 as set forth above.

30. Each photograph comprising the Work is an original work of authorship, embodying copyrightable subject matter, that is subject to the full protection of the United States copyright laws (17 U.S.C. § 101 *et seq.*).

31. Plaintiff owns a valid copyright in each photograph comprising the Work, having registered the Work with the Register of Copyrights and owning sufficient rights, title, and interest to such copyright to afford Plaintiff standing to bring this lawsuit and assert the claim(s) herein.

32. As a result of Plaintiff's reproduction, distribution, and public display of the Work, Defendant had access to the Work prior to its own reproduction, distribution, and public display

of the Work on Defendant's website, webpage, and/or social media.

33. Defendant reproduced, distributed, displayed, and/or publicly displayed the Work without authorization from Plaintiff.

34. By its actions, Defendant infringed and violated Plaintiff's exclusive rights in violation of the Copyright Act, 17 U.S.C. § 501, by reproducing, distributing, and publicly displaying the Work for its own commercial purposes. Defendant's infringement was either direct, vicarious, and/or contributory.

35. Plaintiff has been damaged as a direct and proximate result of Defendant's infringement.

36. Plaintiff is entitled to recover its actual damages resulting from Defendant's unauthorized use of the Work and, at Plaintiff's election (pursuant to 17 U.S.C. § 504(b)), Plaintiff is entitled to recover damages based on a disgorgement of Defendant's profits from infringement of the Work, which amounts shall be proven at trial.

37. Defendant's conduct has caused, and any continued infringing conduct will continue to cause, irreparable injury to Plaintiff unless enjoined by the Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's exclusive rights under copyright law.

**WHEREFORE**, Plaintiff demands judgment against Defendant as follows:

- a. A declaration that Defendant has infringed Plaintiff's copyrights in the Work;
- b. An award of actual damages and disgorgement of profits as the Court deems proper;
- c. Awarding Plaintiff its costs pursuant to 17 U.S.C. § 505;
- d. Awarding Plaintiff interest, including prejudgment interest, on the foregoing amounts;
- e. Permanently enjoining Defendant, its employees, agents, officers, directors, attorneys,

successors, affiliates, subsidiaries and assigns, and all those in active concert and participation with Defendant, from directly or indirectly infringing Plaintiff's copyrights or continuing to display, transfer, advertise, reproduce, or otherwise market any works derived or copied from the Work or to participate or assist in any such activity; and

f. For such other relief as the Court deems just and proper.

**Demand For Jury Trial**

Plaintiff demands a trial by jury on all issues so triable.

Dated: February 8, 2024.

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